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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,022	12/26/2001	Michael Roberts	00216-368004	2417

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EXAMINER

SPISICH, MARK

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/036,022

Applicant(s)

ROBERTS ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 52-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 52-54 and 57 is/are allowed.
- 6) ☒ Claim(s) 55,56 and 58-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 August 2003 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 55,56,58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birch (USP 3,103,027) in view of Michaels (USP 5,040,260). The patent to Birch discloses a toothbrush comprising a handle (10), head portion (11) and a brush portion comprising (1) a single row of elastomeric first bristles (13) (see the embodiment of figs 5-6) long one (as well as the other one of claim 56) outer longitudinal edge thereof and (2) a plurality of non-elastomeric bristles (12) and further wherein the first and second bristles have the same height (see fig 5 and column 2, lines 25-26). The patent to Birch discloses the invention substantially as claimed with the exception of the specific material of the elastomer. The patent to Michaels discloses

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an oral brush with a brush portion comprising a plurality of elastomeric bristles/projections (10,12) of SANTOPRENE (see column 5, line 2), which is the preferred "polyolefin elastomer" of the present application (see page 7, line 3). It would have been obvious to one of ordinary skill to have modified the rubber bristles of Birch as taught by Michaels for the reasons set forth in Michaels. Given the disclosure of the preferred material as well as its use in an oral brush, any differences in the material properties (if any) would be obvious to one having ordinary skill in the art as optimization of a prior art device does not constitute a patentable step.

4. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moskovich (USP 5,628,082) in view of Michaels (USP 5,040,260). The patent to Moskovich discloses a toothbrush comprising a handle, head portion and brush portion wherein the brush portion is comprised of (1) angled gumline tufts (88 or 98 or 116 or 140 or 124) which may be in the form of "rubber or a rubber-like material" (column 6, line 18) and (2) non-elastomeric bristles (eg, 92) between the rows of gumline tufts on opposite outer longitudinal edges of the head portion. The patent to Moskovich discloses the invention substantially as claimed with the exception of the specific material of the elastomer. It would have been obvious to one of ordinary skill to have modified the gumline tufts of Moskovich as taught by Michaels for the same reason(s) set forth above.

***Allowable Subject Matter***

5. Claims 52-54 and 57 are allowed.

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**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Anderson is further pertinent to a toothbrush with both elastomeric and non-elastomeric bristles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Mark Spisich  
Primary Examiner  
Art Unit 1744

MS